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Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM SUMNER SCOTT

Petitioner

v.

THE FLORIDA BAR

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI
VOLUME I OF II

William Sumner Scott, *Pro Se*
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QUESTIONS PRESENTED

1. Does Article III of the United States Constitution authorize the United States Judicial Branch to supervise law enforcement decisions made by the United States Executive Branch?

2. Do the guarantees of freedom of speech and due process provided by the First and Fifth Amendments that extend to the States pursuant to the Fourteenth Amendment of the United States Constitution protect a lawyer from discipline for alleged violations of State Bar Rules when the lawyer used his best judgment to uphold his Bar oath of admission to defend the State and United States Constitutions and to serve the public interests?

PARTIES TO THE PROCEEDING

Petitioner, William Sumner Scott, Esquire, 3109 Grand Avenue, #183, Miami, FL 33133, was the Respondent to the Bar Complaint filed to the Florida Supreme Court.

The Florida Bar, Tallahassee, Florida, was the Complainant below.

Other persons who may have an interest are:

International (a/k/a Intercontinental) Currency Exchange Corporation (ICEC- CA) , a forex brokerage firm, 537 Newport Center Drive, #520, Newport Beach, California 92660; International (a/k/a Intercontinental) Currency Exchange Corporation (ICEC-NV) 1525 North Park Drive, Suite 100, Weston, Florida and certain of ICEC- NV customers: Jacques Gagne, Investcan International, Ltd., 3699 Letourneau, St. Hubert, Quebec, Canada J3Y 7TB; Dr. E. Michael Thomas, 117 E. Priscilla Alden Road, Abington, MA 02351; Roger B. Lennon, 1509 Bedford Street, Rome, NY 13440; Sebantiano Puccio, 300 Marcel Laurin, Suite 106, Ville St. Laurent, Quebec, Canada, H4M 2L4; Moresea, Ltd., Suite B, Regal House, Queensway, Gibraltar; Orville Shultz, 2218 Peach Tree Drive, Little Rock, AR 72211; Lawrence E. Amerson, 176 Woodham Road, Bishopville, SC 29010-8819; Gregory Paul Violette, RR#1, Box 430, Windsor, ME 04363 were Scott's clients before the Federal Court.

The beneficial ownership of Investcan, Ltd and Moresea, Ltd and the ownership structure are unknown to Petitioner; they have acted continuously through agents Jacques Gagne and Sebantiano Puccio, respectively, identified above.

Steven A. Frankel, Esquire, 3660 Washington Ln, Hollywood, Florida 33026-4629 a member of The Florida Bar, was the Bar complaining witness and a 50% owner of ICEC with Richard E. Maseri.

Richard E. Maseri, 537 Newport Center Drive, #520, Newport Beach, California 92660, and 1814 NE Miami Gardens Drive #200, North Miami Beach, FL 33179, was a 50% owner of ICEC with Frankel.

The Florida Supreme Court took judicial notice of the decision to disqualify Scott as the attorney for ICEC-CA and NV) and certain of ICEC-NV brokerage customers that was entered in the United States District Court for the Southern District of Florida and affirmed by the United States Court of Appeals for the Eleventh Circuit.

Barry R. Davidson, Esquire, a member of The Florida Bar, was appointed receiver by the USDC for the Southern District of Florida to collect the assets of Richard E. Maseri in the unrelated case of CFTC v Maseri, et al at case number 95-6970.

Detective John Calabro of the Broward County, Florida, Sheriff's office.

Prudential Securities, Inc. (now Wachovia Securities, Incorporated) was the depository for the ICEC CA corporate and ICEC NV customer accounts.

US Commodity Futures Trading Commission (the "CFTC"), 1155 21st Street, NW, Washington, DC, 20581.

Richard Wagner, Esquire, Deputy Director, CFTC Division of Enforcement, was the CFTC supervisor for the forex investigation in Florida in 1995-99.

The United States Justice Department, Washington, DC.

Maureen Donlan, Esquire, a member of The Florida Bar and assistant United States Attorney, Miami, Florida, was the attorney of record for the CFTC in the CFTC v Prudential, et al, case.

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NOW COMES, William Sumner Scott, pro se, to Petition for Writ of Certiorari, pursuant to United States Code, 28 U. S. C. §1257, and, in support thereof, states as follows:

DECISIONS BELOW

The decision of the Supreme Court of Florida is reprinted in Volume II, Appendix (App.) A at page 1a. The Amended Report of the Referee adopted by the Florida Supreme Court as to the facts is reprinted at App. B, page 21a. The United States Court of Appeals for the Eleventh Circuit unpublished opinion to affirm the United States District Court for the Southern District decision to disqualify me is reprinted at App. C, page 42a. The interlocutory decision of the United States District Court for the Southern District of Florida to disqualify me from the representation of the forex brokerage and its customers adopted by reference by the Referee is reprinted at App. D, page 44a. The Florida Supreme Court denied Petitioner's Motion for Rehearing on July 6, 2010. App. E, page 49a.

JURISDICTION

This Petition is filed to this Court together with the three hundred dollar ($300) filing fee within 90 days from the denial on July 6, 2010, of the Motion for Rehearing under United States Code, 28 U. S. C. §1257 and United States Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Article II
Section 2. provides in relevant part:

"The President shall . . .

have Power, by and with the Advice and Consent of the Senate, to appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law:"

Section 3. provides in relevant part:

". . . take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

U.S. Constitution, Article III
Section 2. provides in relevant part:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . . between a State, or the Citizens thereof, . . .".

U.S. Constitution, First Amendment provides in relevant part:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Constitution, Fifth Amendment provides in relevant part:

"no person shall . . .be deprived of life, liberty, or property, without due process of law ...".

U.S. Constitution, Fourteenth Amendment provides in relevant part:

> "Section 1. . . "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Commodity Exchange Act, 7 U.S.C. § 1, et seq., provides:

> 7 U.S.C. § 6 k(l). It shall be unlawful for any person to be associated with a commodity pool operator . . . unless such person is registered with the Commission (sic Commodity Futures Trading Commission, the "CFTC") . . . are obligated to register.

Applicable provisions of the Oath of Admission to the Florida Bar are:

> "I do solemnly swear:
>
> "I will support the Constitution of the United States and the Constitution of the State of Florida;
>
> "I will maintain the respect due to courts of justice and judicial officers;
>
> "I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;
>
> "I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

> "I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; . . ."

Applicable Florida Bar Rules are as follows:

> **RULE 3-7.16 LIMITATION ON TIME TO BRING COMPLAINT**
>
> **(a) Time for Inquiries and Complaints.** Inquiries raised or complaints presented by or to The Florida Bar under these rules shall be commenced within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered.[1]
>
> **RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS**
>
> **(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer shall not represent a client if:
>
> (1) the representation of 1 client will be directly adverse to another client; or
>
> **(b)** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

---

[1] 3-7.16(b) contains an exception for allegations of theft or conviction of a felony criminal offense that are not relevant to this case.

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;

RULE 4-1.16 DECLINING OR TERMINATING REPRESENTATION

(a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

RULE 4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;"

THE PROCEEDINGS BELOW

On June 27, 2005, upon the complaint of Steven A. Frankel, Esquire, one of its members, The Florida

Bar, filed a complaint in the Florida Supreme Court to allege that I had violated Bar Rules: 4-4.1(a) TRUTHFULLNESS IN STATEMENTS TO OTHERS (in the course of representing a client a lawyer shall not knowingly: (a) make a false statement of fact or law to a third person); 4-8.4(c) MISCONDUCT (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 4-1.7(a) REPRESENTING ADVERSE INTERESTS (A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client); Rule 4-1.9(a) CONFLICT OF INTEREST; FORMER CLIENT (a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client consents after consultation); and Rule 4-1.16(a)(1) DECLINING OR TERMINATING REPRESENTATION (A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if: the representation will result in violation of the Rules of Professional Conduct or law).

On August 1, 2005, I attempted to serve interrogatories upon Steven Frankel, Esquire, the Bar complaining witness, and Richard Wagner, supervisor division of enforcement, US Commodity Futures Trading Commission. Neither of them responded to the discovery.

The Referee denied my Motions to Compel Discovery. My Motion to Compel is App. F, page 50a.

On October 18, 2005, I filed a Motion for a Referee to be appointed in my case who did not look

to The Florida Bar for endorsement to seek judicial office and who was not a member of The Florida Bar. That Motion was denied on October 24, 2006.

On February 8, 2006, I filed my Response to the Bar Complaint with the Referee that included as Affirmative Defense XI, the lapse of the Six Year Statute of Limitations.

On June 18, 19, and 20, 2007, a hearing was held before a Referee.

References to testimony are to the three Volume Transcript of the Hearing before the Referee held from June 18 to 20, 2007 that was docketed in the lower Court by amended entry on May 29, 2009, under the generic heading "06/26/09: (Transcripts & Misc. Pleadings filed) (1 Box of Records)"; and, to the Transcript of the Hearing held before the Referee on April 28, 2009, on the Respondent's Motion for Dismissal for lapse of the Statute of Limitations docketed in the lower Court on May 11, 2009.

On August 21, 2007, the Referee filed his original Report to recommend that I be found guilty of the Conflict of Interest Rules, suspended for 18 months, with costs assessed to me.

On August 27, 2007, I filed a Motion to Dismiss the Bar Complaint to the Florida Supreme Court for failure of the Bar to bring its complaint within the six year statute of limitations or, in the alternative, the Referee's Report be remanded to the Referee. 8-27-07 docket entry.

On September 19, 2007, I filed my Petition for Review of the Referee's Report of August 21, 2007. 9-27-07 docket entry.

On January 30, 2009, the Court Denied, without opinion, my Motion to Dismiss for lapse of the Statute of Limitations, vacated the Report of Referee filed on August 27, 2007, and Remanded this case to the Referee for further proceedings.

On or about March 3, 2009, the three volume transcript of the hearing held before the Referee from June 18 to 20, 2007, was filed with the Referee.

On April 30, 2009, I filed my Petition for Review of the Denial of my Motion to Dismiss for the Statute of Limitations to the lower court.

On May 11, 2009, I filed the transcript of the proceedings before the Referee that considered my Motion to Dismiss for lapse of the Statute of Limitations on the record with the Florida Supreme Court. Vol SL 1.

On May 29, 2009, the Referee Amended Report was docketed to recommend the lower court to find that I had violated the Bar Rules to be truthful to third parties and conflict of interests and that I be suspended from the practice of law for 18 months, with costs assessed to me.

On May 29, 2009, the three volume transcript of the hearing held before the referee was docketed with the lower court by reference to a box of documents from the Referee.

On June 24, 2009, I filed my Petition for Review of all issues related to the case.

On July 1, 2009, the Florida Bar filed its Cross Petition for Review of the penalty.

On September 25, 2009, the Lower Court entered an Order to deny my Motion to Dismiss for lapse of the Statute of Limitations with leave to me to

request a ruling on my Statute of Limitations Motion in my Brief in support of my Petition for Review.

On October 13, 2009, I filed my brief on the merits that preserved, among other things, my Statute of Limitations defense.

On June 10, 2010, The Florida Supreme Court suspended me from the practice of law in Florida for three years by Opinion with a statement that, because the court had ruled on my prior Motion to Dismiss for the Statute of Limitations, no discussion of my Motion would be made in this opinion.

On June 21, 2010, I filed my Motion for Rehearing.

On July 6, 2010, my Motion for Rehearing was denied.

THE RECORD

The Lower Court Record consists of:

A. A three volume transcript of the hearing held before the Referee from June 18 to 20, 2007, hereinafter Ref Tr, Vol, I, II, and III. See box of materials from the Referee docketed to the lower court Court on 5-29-09; and

B. A one volume transcript of the hearing held on April 28, 2009, to consider my Motion to Dismiss for the Statute of Limitations docketed with the lower Court on May 11, 2009, hereinafter Ref Tr, Vol SL.

STATEMENT OF THE CASE

The documentation signed by Frankel is sufficient to prove that he either waived all conflicts or was never my client.

The testimony and documentation also demonstrate my good faith effort to comply with the truthfulness and conflict Bar rules.

This controversy is real because my license to practice law in Florida has been taken from me by the Supreme Court of Florida.

All other aspects of this case were staged by an undercover Federal and Florida law enforcement investigation of unregistered forex trading that was originally intended by my client, Richard E. Maseri, ("Maseri"), an undercover operative, to entrap me in an illegal act.

Before 1996, the United States Commodity Futures Trading Commission (the "CFTC") believed that the Commodity Exchange Act, 7 USC § 1, et seq. ("CEAct") authorized it to investigate forex brokerage.

Based upon that belief, it established a nationwide investigation of unregistered forex brokerage operations. Many of the investigations resulted in alleged CEAct violation enforcement actions. One of those actions resulted in a finding that the CEAct did not extend to regulation of forex brokerage. See *CFTC v Frankwell, et al*, 99 F.3d 299 (9th Cir. 1996).

In addition to pursuits of other enforcement actions before the Courts in other jurisdictions, the CFTC began to collect evidence of forex brokerage fraud to present to the United States Congress to have the CEAct amended in 2000 to specifically include forex brokerage.

The CFTC enlisted the United States Attorney General (the "USAG") and the Florida Statewide Prosecutor (the "FSP") to aid in the investigations

conducted in Florida. The FSP engaged various Florida law enforcement officers ("FLE") (collectively, the CFTC, USAG, FSP and FLE are hereinafter called the "Task Force").

By December, 1998, the Task Force had over 25 forex brokerage firms under surveillance in Florida. Ref Tr, Vol I, P 181, L 2 to L 6.

Maseri and Frankel worked undercover to collect evidence on behalf of the CFTC.

As evidenced by the SunSentinel News Article by Mitch Lipka published on December 16, 1998, ten forex operations were raided in one day by the Task Force. App. I, page 81a.

The picture in the news article shows a US Postal Inspector involved in the raid of the ICEC office. No mention is made of the CFTC in the article. Rather than the usual claim of credit for efforts expended, the CFTC went undercover in investigations to make its' presentation to Congress to amend the CEAct to include forex brokerage appear to be based upon evidence collected by independent third parties.

At the outset of the investigation in Florida, the Task Force learned that many of the forex brokerage sales people operated from home offices. Home office telephone line taps were difficult to obtain. In addition, the initial collection of information resulted in few egregious examples of forex fraud.

To overcome these two deficiencies, the CFTC made a business arrangement with Prudential Securities, Inc. ("Prudential") to induce forex sales people to an office where they could be monitored and to create public customer fraud that would be certain to justify amendment to the CEAct to include forex brokerage.

Prudential, for a fixed legal fee of $5,000, retained Steven A. Frankel ("Frankel"), a member of the Florida Bar, under the protection of Florida Bar Rule 4-8.4(c) which affords an exception from claim of Bar misconduct to a lawyer who provides legal advice to an undercover investigation, to form a forex brokerage company with Richard E. Maseri (Maseri"), an undercover US Government operative.

The protection of Bar Rule 4-8.4(c) was provided to Frankel, the Bar complaining witness against me, without affording me equal protection under the First, Fifth and Fourteenth Amendments to the United States Constitution to complain about his conduct and to represent the innocent members of the public harmed by the undercover operation.

Prudential supplied $185,000 seed money to Frankel to establish the forex brokerage to operate to be called International (a/k/a Intercontinental) Currency Exchange Corporation ("ICEC").

The Task Force/Prudential/Maseri/Frankel plan was for ICEC to construct a modern office in Florida to supply investment research, computer terminals, live quotes, bookkeeping support, regulatory compliance and other similar benefits to lure forex sales people from their home offices to a location where they could be monitored. Frankel and Maseri would form ICEC as a Florida corporation and have a stockholder agreement where they would be 50% owners.

Maseri retained me to represent him in the negotiation of the ICEC stockholder agreement with Frankel. Upon receipt of the first draft of the ICEC shareholder agreement from Frankel, I sent Maseri a letter to provide my comments. App. J, page 83a.

Among my suggestions was the insertion of language that both parties had been afforded the opportunity to seek legal counsel of their choice. Frankel responded that it was not necessary to insert this language as Maseri was represented by me and Frankel was licensed to practice law in Florida and New York. App. O, page 98a, item 4.

Another of my suggestions contained at the third bullet in App. J, page 83a was that ICEC had to be operated from within the Ninth Circuit to be legal because ICEC, Frankel, and Maseri planned not to be registered under the CEAct and, therefore, they needed the protection of the *Frankwell* decision cited above to avoid accusations from the CFTC that CEAct registration was required to operate ICEC as a forex brokerage.

Frankel insisted that ICEC operate in Florida. He also wanted Maseri obligated to perform certain functions under a personal services agreement that would have been a violation of an outstanding Federal injunction against Maseri entered in *CFTC v Maseri, et al*, at case number 95-6970 then pending before the United States District Court for the Southern District of Florida.

I told Maseri under no circumstances could he operate in Florida or sign a personal services agreement. Frankel sent me a memo on July 29, 1998, to tell me his reactions to my comments. App O, page 98a.

I sent the memo to Maseri. Maseri had Frankel call me to discuss these issues. In response to my explanations, Frankel told me he accepted the location of ICEC to be Newport Beach, California,

within the 9th Circuit, and that there would be no personal services agreement with Maseri.

The Florida Supreme Court accepted the facts submitted by the Referee.

The Referee held if Maseri had followed my advice, he would have operated ICEC without violation of an outstanding injunction against him. Ref Amd Report, App. B, page 21a, at page 24a, note 2.

My opinion that the operation of ICEC within the US Ninth Circuit in accordance with my instructions to Maseri would have been perfectly legal has not been contested.

Maseri ignored my advice that would have made ICEC a legal operation within the US Ninth Circuit.

Instead, without my knowledge, he and Frankel, as 50% owners, moved ICEC CA and NV from the US Ninth Circuit to the US Eleventh Circuit where it was exposed to the CFTC claim that they, Frankel, and Maseri operated without proper registrations under the CEAct.

In addition, contrary to the *Frankwell* guidelines and applicable CEAct commodity pool law, Frankel and Maseri put all of the ICEC customer money in a single account at Prudential Securities, Inc. ("Prudential") with Maseri as the sole signatory rather than in segregated accounts in the name and upon the sole signatory authority of each customer.

While Frankel was not held criminally or civilly liable for his participation in the operation of ICEC within the US Eleventh Circuit, I was denied equal protection and substantive and procedural due

process by the Florida Supreme Court's refusal to consider my good faith conduct and defenses.

Also, my attempts at discovery to prepare for the hearing were denied.

In January, 1999, ICEC filed a response in the case of *Prudential v CFTC, et al*, at USDC for the Southern District of Florida case number 98-8891 that included a list of ICEC customers by name and amount deposited to their ICEC account that was served upon Barry R. Davidson, Esquire, ("Davidson"), the receiver appointed in the USDC for the So. Dist. of Florida Case number 95-6970, *CFTC v Maseri, et al.*, to collect Maseri's assets for the benefit of persons unrelated to ICEC or its customers. A copy of the list is attached as App. G, page 73a.

Justice would have been served had Davidson used the list of customers to confirm that the deposits were made and immediately returned the money to the ICEC customers.

Davidson refused the ICEC demands that he make immediate payments to the ICEC customers. Instead, over ICEC and certain of its customers' objections, Davidson performed work that was unnecessary to ICEC and its customers to run up fees and costs in excess of $155,000 that were approved for payment from the ICEC customer accounts by the USDC for the Southern District of Florida in the unrelated case of *CFTC v Maseri, et al*, at case number 95-6970.

When the ICEC customers received less than 100% return of their deposits, certain of them retained me to bring a civil action against Frankel and Maseri, as 50% owners of ICEC, for restitution

in the USDC for the So Dist of Florida at case number 02-60565, *Investcan, et al v Frankel, et al*.

To prevent a finding that Davidson was overpaid, the United States District Court for the Southern District of Florida entered an Order on October 4, 2002 in the *Investcan,* case to disqualify me as counsel for the ICEC customers for *an appearance* of conflicts with an alleged prior representation of Frankel. App. D, page 44a.

The Order to disqualify me was entered without affording me a hearing to cross examine Frankel and present a record of my good faith behavior. App. D, 44a.

Certain of the ICEC customers appealed the disqualification Order to the US Circuit Court of Appeals for the Eleventh Circuit at case number 02-16312, *Investcan, et al v Frankel*.

Neither Frankel nor I contested the use of "*it appears*" language in the disqualification Order – Frankel was satisfied with that language and I denied ever representing Frankel to the 11th Circuit, yet the 11th Circuit, without being asked, found that I had absolutely violated Fla Bar Rule 4-1.9. Compare App. C, page 42a with App D, page 44a.

I denied that Frankel was ever my client or had any other relationship with me that would cause a confidential relationship. The documents signed by Frankel confirm my denial.

On July 29, 1998, Frankel sent me a memo to say he would be his own lawyer. App. O, page 98a, Item 4.

On December 6, 1998, there existed the possibility that the money on deposit in the ICEC

accounts at Prudential was sufficient to make 100% restitution to the ICEC customers. Ref Tr Vol III, P 400, L 3 to 9.

On December 18, 1998, Frankel signed a retainer agreement that included a representation that I had explained the potential conflicts of interest among the ICEC depositors and afforded Frankel the opportunity to obtain legal counsel of his choice. The intent of this document was to limit my representation to seek return of the ICEC accounts that held Frankel's money, not represent Frankel, to permit me to represent ICEC and its customers against Frankel should the money on deposit at Prudential be insufficient to provide 100% restitution to the ICEC customers. App. P, page 100a.

On December 21, 1998, Frankel signed an addendum to the November 30, 1998, ICEC retainer agreement to specifically acknowledge that I had never been his attorney. A copy of the ICEC retainer and the Frankel addendum are included at App. H, page 77a.

Frustrated that he could not get me to approve an illegal operation, on August 4, 1998, in a meeting that was scheduled among Maseri, Frankel and me, Frankel set up a plan to entrap me to be responsible for ICEC without regard to where it operated.

Prior to Maseri's arrival, at the meeting, Frankel asked me questions. He provided the following explanation of his conversation with me in a statement he gave to Broward County law enforcement on February 22, 1999, which was read into the record in this case as follows:

> Q. Referring to Page 18 read into the record the highlighted material, please.

A. "One of the things I did do at that meeting was confront Mr. Scott directly and ask him how long he knew Mr. Maseri and what his relationship was with Mr. Maseri. Can you answer those as you go along -- he told me that he knew Mr. Maseri for about ten years. I asked him do you know if that in fact was true. I don't know if that's true. That's what he told me. What else did he tell you? I asked him what he knew about Mr. Maseri, and if he knew anything detrimental about Mr. Maseri. His response to me was that 'Mr. Maseri, that he had tricked, he being Mr. Scott, had traded currency with Mr. Maseri and that Mr. Maseri had never lied to him'. And that is the total response."

Frankel testimony Vol II, P 249, L 22, to P 250, L 9; Resp Ex I, App Q, page 103a.

Frankel testified that my answers *indicated* to him that Maseri was an honest man.

The Referee elevated Frankel's claim of indication of honesty to a finding that I had specifically said Maseri was an honest man. The Referee qualified this finding by the statement that had I not specifically represented to Frankel that Maseri was an honest man, I would have not had an obligation to disclose unfavorable information about Maseri. App. B, page 21a, at pages 25a and 26a.

The lower court quoted the Referee finding that I had specifically said Maseri was an honest man. App. A, page 1a, at page 9a. Admittedly, my intention was to imply that Maseri was an honest man, but Frankel's impression and my intent are not relevant.

What I said was that Maseri had never lied to me. My intent was to preserve Maseri's honest business relationship with Frankel. Maseri was my client, not Frankel. My obligation was to tell the truth. And that is what I did.

That my intent and Frankel's beliefs from my factual statement are irrelevant is supported by a clear reading of Fla Bar Rule 4-4.1(a) which provides:

> "In the course of representing a client a lawyer shall not knowingly:
>
> **(a)** make a false statement of material fact or law to a third person; or"

Frankel admitted on the record that he had no evidence that prior to August 4, 1998, I had knowledge that Maseri had lied to me. And, I testified that prior to August 5, 1998, I believed Maseri had never lied to me. My answers were truthful. They also were immaterial. The proposed business was to be honest. Maseri's past was irrelevant.

No record of crime, however long, makes a person an outlaw. *Olmstead v United States*, 277 U. S. 438, 485 (1928), (Dissenting Opinion of Mr. Justice Brandies).

The lower court got around the truthfulness of my answers by expansion of my obligation to be that I must not intend to mislead Frankel. App. A, page 1a, at pages 10a and 11a.

That expansion of obligation was without notice to me or included in the Florida Bar Rules.

The lower court finding is a violation of my First Amendment right to free speech as it imposes an obligation upon me to identify Maseri as the Court

directs rather than consistent with my best judgment of Maseri's intent and my lawyer's oath to serve Maseri.

Upon Maseri's arrival at the August 4, 1998 meeting, I told him that Frankel had asked me questions that appeared to be an attempt to make me responsible should anything go wrong with ICEC and that I wanted to resign as Maseri's attorney and refuse to be legal counsel for ICEC.

Maseri responded that he needed to go forward with the agreement reached on August 3, 1998, for me to prepare the ICEC new account forms. I agreed. Frankel needed my effort to complete the ICEC new account forms to continue his business venture to the same extent as Maseri. The ICEC new account forms retainer was signed by Maseri, Frankel, and me. App K, page 85a.

I delivered the new account forms to Maseri in hard copy and email within the ten day period provided in the retainer agreement. The forms provided Newport Beach, CA as the location for the ICEC CA office where customers would return their signed forms and account deposits. My advice to Maseri was that all sales people had to be located within the 9th Circuit as well.

To separate me from the move of ICEC from the 9th Circuit to Florida, Maseri and Frankel formed another ICEC without my involvement in Nevada ("ICEC NV") on August 8, 1998. Ref Tr Vol III, P 375, L 23 to P 376, L 7.

In spite of my advice that the operation had to operate from within the Ninth Circuit, Frankel was induced to agree to move ICEC CA and NV to Florida upon reliance of the representation from Maseri that

I would never again be contacted and immunity from assertion of wrongful conduct provided by Fla Bar Rule 4-8.4.

On November 25, 1998, Maseri breached his agreement with Frankel by a call to ask me to use my best efforts obtain a release of a freeze of the ICEC accounts at Prudential.

On December 5, 1998, upon investigation, I learned that (i) ICEC CA and NV had been operated, including a sales effort, from an office in Weston, FL, (ii) all of the ICEC NV customer money was deposited in a single account with Maseri as the sole signatory rather than in the name of each customer with only the customer having the right to sign for the account, and (iii) CEAct regulated futures trades had been placed in the ICEC CA and ICEC NV accounts.

REASONS TO GRANT THIS PETITION

I. To review law enforcement procedures that inhibits the honest administration of justice.

These facts were evidence of civil liability by Frankel and Maseri to the public customers they induced to open forex brokerage accounts with ICEC. My uncontroverted testimony on the record in this case is as follows:

> ". . . On or about December the 6th, I determined that ICEC was an intentional fraud from the get go.
>
> Now, I explained that it had to do more than just be incorporated (sic in California). That's just fluff. You have to actually operate out of there. Both of them represented to me that their sales

> office was going to be in Newport Beach, California.
>
> . . . one, they didn't operate with segregated accounts. And both Frankel and Maseri knew better. They put all of the money in a single account, which is also an exhibit that's been introduced in this case, listing all the names of the people that (sic deposited) the money into Prudential. That was all put in a single account under Maseri's sole name. It's absurd:
>
> . . . in order to put it in a single account you have to be a commodity pool operator because you're automatically a commodity pool operator if you have more than 14 clients and more than $250,000.00 in 1998. The list has far more than $250,000.00, and there are far more than 15 persons, . . ."
>
> Ref Tr Vo III, P 395 L 3, to P 397 L 10, App. R, page 106a.

Because Maseri was made the sole signatory on the ICEC accounts at Prudential, Barry R. Davidson, Esquire, also a member of The Florida Bar, the Federal Court appointed receiver to collect the assets of Maseri to pay to customers in the unrelated case of *CFTC v Maseri, et al*, at United States District Court for the Southern District of Florida case number 95-6970, had a color of right to claim that Maseri had a personal interest in the ICEC customer accounts.

Task Force Detective John Calabro testified that the US Department of Justice Federal Bureau of Investigation (the "FBI") and the US Attorney's office formed a task force to investigate telemarketing fraud. Ref Tr Vol I, Page 164, L 16 to Page 165, L 1.

Detective Calabro further testified that the FBI raided 25 telemarketing operations on December 15, 1998. Ref Tr Vol I, P 181, L 2 to L 6.

Florida law enforcement held Frankel blameless for his move of ICEC from the 9th Circuit to the 11th Circuit and his refusal to defend the ICEC customers from loss when he was named a defendant in the Prudential case.

The Florida Bar allowed Frankel to complain and appear as its witness to attack my right to practice law.

Over ICEC's objection, on Davidson's Motion, the United States District Court for the Southern District of Florida, transferred the ICEC corporate and customer accounts to Davidson to administer in the unrelated to ICEC case of *CFTC v Maseri, et al*, at USDC for the Southern District of Florida case number 95-6970.

The Florida Bar Rules specifically provide:

(b) Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

No discussion is made in the Florida Supreme Court Opinion or the Amended Referee Report of my reasonable beliefs. To the contrary, the Court ruled that the conflict of interest between Frankel and me was so fundamental that it could not be condoned by the client (sic Frankel), even with full disclosure with citation to *The Fla. Bar v Feige*, 596 So.2d 433, 434; *The Fla. Bar v Ward*, 472, So. 2d 1159 (Fla. 1985) as authority.

Feige and Ward are not applicable to this case. In those cases, the subject lawyer committed fraud. In this case, it was the alleged client, Frankel who committed the fraud.

When I found the ICEC frauds in December, 1998, I obtained his written waiver of conflicts and acknowledgement that I had never been Frankel's lawyer to be certain that I could represent ICEC and its customers to obtain 100% restitution, including an action against Frankel, if that were necessary. App. P, page 100a.

The reference to this December 18, 1998, document as a retainer is not relevant, it is the content that counts. The lower court nor the referee discussed the reference in App P., page 100a, of the explanation of the conflicts among the depositors; i.e., the ICEC customers had a right to return of their money before Frankel would receive any return of his money. App. P, page 100a read with the Frankel acknowledgement that I had never been his attorney contained in the Addendum to App. H, page 77a make it clear that Frankel intended to waive all

conflicts to preserve my right to represent ICEC and its customers against him, if necessary.

Once conflicts are waived, they remain waived without evidence of a new relationship. No evidence of a new relationship exists.

In a meeting held in my office on December 6, 1998, Frankel and Maseri told me that the money on deposit at Prudential was sufficient to make 100% restitution to the ICEC customers.

A separate fraud was committed against ICEC and its customers by Davidson. Rather than remit the ICEC deposits to the ICEC customers, Davidson ran up fees and costs in excess of $155,000 for work that did not concern ICEC and its customers. The charge of $155,000 by Davidson made 100% restitution impossible.

What I said to Frankel on August 4, 1998, was not material to his loss. His move of ICEC from California to Florida and the actions of the Receiver caused his loss.

On January 1, 2001, upon representation that all parties had agreed, the USDC for the Southern District of Florida dismissed the *Prudential v CFTC*, et al case at No. 98-8891. App. N, page 97a.

ICEC and many of its customers had their appearance on file in the Prudential case. None of them agreed to the dismissal of that case.

To the contrary, ICEC and many if its customers requested continued supervision of Davidson in the Prudential case rather than for Davidson to act in the *CFTC v Maseri, et al*, case at number 95-6970, where ICEC and its customers were not parties.

Without discussion of my defenses or good faith behavior, the Florida Supreme Court suspended me from the practice of law.

The Florida Supreme Court held me responsible for conflicts of interest explained in the Referee Amended Report with persons totally separate from any persons who were my clients.

Prudential, Private Research, the customers of Maseri in the prior case that involved Maseri, were unrelated to ICEC and the ICEC clients who retained me.

Private Research was my client in the prior Maseri case, but it had no interest in the ICEC case.

The claimed conflicts among the depositors or ICEC and its customers are pure fiction. ICEC never claimed ownership of its customers' money, only that the customers had a superior right to return of their deposits than Frankel had to the return of his loan.

No person had any right to make a claim of conflicts against me. And, this case concerned only the complaint from Frankel.

Frankel agreed with me on December 6, 1998, that the ICEC customers came first. The is confirmed by the fact that Frnakel made no objection when the Receiver subordinated his loan to the interests of the customers at the time the Receiver made his distribution of what remained of the ICEC deposits after deduction of his fees and costs.

The Federal and Florida legal systems withheld facts from the ICEC customers and me under the guise that the prosecution of Maseri was in progress. On the release of Frankel transcripts and other documents by the Broward County, Florida, State

Attorney, I was made aware that the CFTC was the motivating force behind the establishment of the ICEC operation in Florida.

On March 21, 2005, I sent a letter to Maureen Donlan, Esquire, Assistant US attorney who served as legal counsel to the CFTC in the Prudential case to ask questions to justify the reopening of the Prudential case to seek 100% restitution for the ICEC customers. My letter was admitted into evidence as Exhibit 51 to The Florida Bar hearing. App. M, page 92a.

Neither Ms. Donlan nor any of the persons receiving copies of my March 21, 2005, letter responded. Instead, I was met with The Florida Bar complaint initiated by Frankel on June 27, 2005.

The acceptance of this case will permit this Court to review the quality of Federal and Florida Executive Branch supervision of law enforcement that allows undercover operations to cause damage to the public. Particularly, the right of the US Executive Branch to withhold information in civil cases that would allow the public to recover for the losses they sustain as a result of undercover operations.

And, should lawyers who expose other Bar member frauds be subjected to slap back Bar proceedings.

II. To review due process applicable to attorney license discipline proceedings.

Claims made by the Bar must be brought within six years. Rule Regulating the Florida Bar 3-7.16(a) quoted above. Fla Bar Amendments to Rules Reg. Fla Bar, 658 So. 2nd 930 (Fla 1995).

A statute of limitations defense runs from the time the cause of action accrues which, in turn, is generally determined by the date when the last element constituting the cause of action occurs. *Hearndon v Graham*, 767 So. 2d 1179 (Fla 2000).

Specifically, the beginning date for a statute of limitations to run on Bar misrepresentation claims is the date of the alleged statement and on the conflicts of interest claim is the date of notice by the attorney of the potential conflict and the intent of the attorney to represent interests that are in conflict with the alleged client. *Fla Bar v Barrett*, 897 So. 2d 1269 (Fla 2005); *Fla Bar v Walter*, 784 So. 2d 1085 (Fla 2001); *Scott v Fla Bar*, SC 08-2227 (Fla12-8-08).

My alleged misstatement of fact was claimed to have been made on August 4, 1998. On August 4, 1998, Frankel, represented in the retainer from ICEC for me to prepare the customer account forms that he was afforded the opportunity to seek legal counsel of his choice. His choice of legal counsel was that he would represent himself. Bar Ex 9, Vol II, P 226, L 20 to P 227, L 16.

My alleged representation of Frankel began on December 18, 1998 when I presented him with notice of the conflicts among the depositors and that I would represent ICEC and the customers. App. P, page 100a.

The allegation of conflicts was the result of claimed representation of Frankel that occurred prior to December 21, 1998. On December 21, 1998, Frankel signed an addendum to state that I had never represented him.

On January 15, 1999, Vail Gardner, Esquire, sent me a letter that refers to a letter she received dated December 23, 1998, to identify Dennis Eisinger, Esquire, as the attorney for Frankel. App. S, page 110a. Ex 18,Ex DD and R; Frankel, Vol II, P 305, L14 to P 306 L 6.

There are no statutory tolling provisions applicable to Bar claims of misrepresentation or conflicts of interest. The party who seeks to escape the application of the statute of limitations bears the burden of proving circumstances that would toll the statute or demonstrate that the statute is not applicable to the facts. *Landers v Milton*, 370 So. 2d 368, 370 (Fla. 1979).

No record facts were presented in this case or any applicable law presented by the Florida Supreme Court to justify the denial of the dismissal of the Bar Complaint for failure to file within six years.

My license to practice law, once vested, was a property right subject to divesture or suspension only upon satisfaction of due process of law. *Sheiner v State*, 82 So. 2d 657, 662-663 (Fla. 1955).

The Bar Complaint was filed on June 27, 2005. SC 05-1145 - Florida Supreme Court Opinion, App. A, page 1a.

The filling of the Bar Complaint is beyond six years from the date my alleged wrongful answers and notice of intent to represent ICEC provided to Frankel. Frankel signed the agreements of December 18 and 21, 1998 to induce me to continue to attempt to get the ICEC accounts released as ICEC lawyer with full knowledge that if 100%

restitution was not made to the ICEC customers, I would sue him on behalf of the customers.

Once the defense of the statute of limitations has accrued, it is protected as a property right interest. *Wood v Eli Lily & Co.*, 701 So2d 344, 346 (Fla 1997); *Wiley v Roof*, 641 So. 2d 66, 68-69 (Fla. 1994); *In Re Estate of Smith*, 685 So. 2d 1206, 1210 (Fla 1966), cert. denied, 117 S.Ct.. 2434 (1997); *Mason v Salinas*, 643 So. 2d 1077, 1078 (Fla 1994).

The lack of application of the Statute of Limitations is a denial of substantive and procedural due process guaranteed to me by the Fifth and Fourteenth Amendments to the United States Constitution.

A successful appeal based upon the toll of the statute of limitations renders all other issues moot. *Haskins v City of Ft. Lauderdale*, 898 So 2d 1120, 1123 (Fla 4th DCA 2005).

This court reviews my Statute of Limitations defense de novo. *Cooper Industries, Inc. v Leatherman Tools Group, Inc.*, 532 U. S. 424 (2001).

The Florida Bar Rule 4-1.7(b)(1) and (2) quoted above, allows me to exercise my judgment of when the representation of a former client will prevent the representation of a current client provided no law prevents the representation.

Without waiver that I never represented Frankel, it is my opinion that my obligation to use my best efforts to obtain 100% restitution on behalf of the ICEC customers was superior to the right of Frankel to claim conflicts of interest. Frankel came to court with unclean hands.

The Florida Bar Disciplinary Rule 3-7.6 Procedures Before a Referee provides in paragraph (f)(2) Discovery as follows:

> (2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

Florida Rule of Civil Procedure 1.280 (c) provides for protective orders as follows:

> "(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; . . ."

The Referee denied my Motion to Compel discovery of Frankel and Wagner. They were believed by me to have knowledge of the Task Force structure and operation. Without waiver that my personal knowledge of the ICEC events is sufficient to support my contentions that law enforcement facilitated the ICEC depositor losses, had I been permitted to engage in discovery, those positions would have been confirmed.

The Referee is a Judge of the Florida Circuit Court. See signature line on the Amended Referee Report. App. B, page 21a. The Florida Bar routinely comments on the fitness of judicial candidates.

The Referee appeared biased because he denied my Motion to Compel Discovery and suggested answers to Frankel during my cross examination.

All of the judges who have reviewed this case on behalf of the State of Florida are members of The Florida Bar. They look to The Florida Bar for endorsement to attain their positions.

In addition they have all decided to protect Davidson and Frankel, their favored members, over me because The Florida Bar, a labor union, desires to protect the income of its members appointed as Federal Receivers and as lawyers for Executive Branch law enforcement.

The USDC for the Southern District of Florida Judge that entered the disqualification Order against me in the *Investcan* case had a bias against allowance of the ICEC customer complaints to proceed against Frankel because that same judge approved excessive Receiver fees and costs that were paid from the ICEC customer money that would have become an issue had the customer claims against Frankel gone forward.

My clients' interests in quality legal advice and protection by the courts have been relegated to a secondary position behind those Bar interests by the bias of these judges and the rules adopted by the lower court and the Bar to protect their favored members.

When analyzing the establishment of an integrated, captive Bar association in Wisconsin similar to the one established by the Florida Supreme Court, Justice Douglass, in his dissent in *Lathrop v Donohue*, 367 US 820, 884, (1961), opined that it was clear from the facts in *Cohen v. Hurley*, 366 U. S. 117 (1961) that the Bar and Bench do not move to a single "nonpartisan" objective.

Justice Douglass further clairvoyantly predicted that once an integrated Bar was approved, a device would be in place where men and women in almost any profession or calling can be at least partially regimented behind causes which they oppose.

In this case, I am opposed to the use of Bar Rules to authorize conduct by Frankel to move ICEC from the 9th Circuit to the 11th Circuit and to the taking by charge of excessive fees and costs of my clients' money by Davidson. No prosecutions have been brought against either Frankel or Davidson.

Justice Douglass further opined that brigades of lawyers in integrated Bar associations are not compatible with the First Amendment. While the legislature has few limits where strictly social legislation is concerned [*Giboney v. Empire Storage Co.*, 336 U. S. 490 (1949); *Tot v. United States*, 319 U. S. 463 (1943),] the First Amendment applies strictures designed to keep our society from becoming molded into patterns of conformity which satisfy the majority.

My free speech right to explain that the ICEC customers were entitled to receive 100% restitution to Maureen Donlan, Esquire, App. M, page 92a, and other regulatory authorities suffered diminished credibility by the removal of my license to practice law by The Florida Supreme Court and those in control of its integrated Bar.

Without waiver that Frankel was never my client and that the documents he signed preserved my right to represent ICEC and its customers against him, my oath as an attorney obligated me to place Bar rules and any rights Frankel would have to claim conflicts in an inferior position to my obligation

to obtain 100% restitution for the innocent members of the public who lost their money because of the intentional CEAct violations Frankel committed.

Staged law enforcement events that damage members of the public must never be condoned by the maxim "the end justifies the means". *Romer v Evans*, 517 US 620 (1996); *United States v Virginia*, 518 U. S. 515 (1996). The lower court denied that this argument exists. App. A, page 1a, at page 12a.

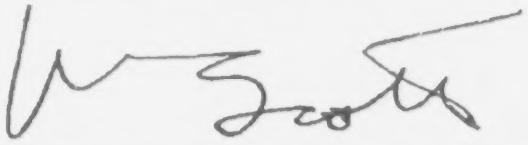
CONCLUSION

The present posture of this case sends the message that serious negative consequences will be imposed against lawyers who complain to legal system administrators of the wrongs committed by government officials, judges, and other lawyers.

This Court is requested to accept this case to review how to best send the message to government and legal system members that their oaths of office are to be respected.

ACCORDINGLY, this Court is requested to accept this case for review.

Respectfully submitted,



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